IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 11479 of 2004

Between:

1 Union of India rep.by the Chief Engineer (SZ)II,

Central Public Works Department, Nirman Bhavan,
Sultan Bazar, Hyderabad
2 The Superintending Engineer, Hyderabad Central Circle-I,
Central Public Works Department, Nirman Bhavan,

Sultan Bazar, Hyderabad
3 The Executive Engineer, Hyderabad Central Division I,
Central Public Works Department, Nirman Bhavan,

Sultan Bazar, Hyderabad

..... PETITIONERS

AND

Shri A.Ramakrishna, S/o Shri A.Narsing Rao,
R/o Plot No.246, Sripuram Colony, Malakpet, Hyderabad

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction, more in the nature of Writ of Mandamus, declaring the orders passed by this Hon'ble Court in A.A.No.56 of 2003 dated 27-2-2004, as illegal, arbitrary, contrary to law and unconstitutional and declare the same as void abinito, null and void and nonest in the eye of law, by holding that the Arbitrator

appointed by the department vide proceedings dated 3-11-2003 is entitled to be continued as an Arbitrator.

Counsel for the Petitioners : MR.A.RAJASHEKAR REDDY (SC FOR CG)

Counsel for the Respondent : MR.K.PRABHAKAR .

The Court made the following :

The Court made the following Order:

(Per Hon'ble Sri Justice B. Sudershan Reddy)

The respondent herein filed Arbitration Application under Section 11(6) of the Arbitration and Conciliation Act,1996 (for short 'the Act') read with scheme for appointment of Arbitrators 2000 praying this Court to appoint a sole arbitrator to adjudicate the disputes and differences between himself and the writ petitioners herein in respect of the constructions of office building and residential quarters Type-III –2 Nos. and Type-II –3 Nos. including services for SIB Department, Sultan Bazar, Hyderabd under agreement No.24/EE/HCD II/2000-2001 dated 08-11-2000 on the file of the first respondent.

We do not propose to notice the details and nature of controversy between the respondent-applicant and the writ petitioners herein except to note that certain disputes have arisen between them requiring resolution. Various allegations and counter allegations are made by each of the party against the other. The sum and substance of the case setup by the respondent is that even after completion of the work to the satisfaction of the petitioners herein, the petitioners failed to pay the final bill and on the other hand issued bill on 31-03-03 making an arbitrary deduction. That, in spite of repeated representations, no steps were taken by the petitioners rectifying the mistake committed by them in the matter of finalization of the bill. The case set up by the respondent is that representations made by him did not revoke any response what so ever from the petitioners.

That, on 25.07.2003 the respondent applicant got issued notice calling upon the petitioners to refer the dispute to an Arbitrator. The petitioners having received the

said notice advised the respondent applicant to follow the procedure prescribed under Clause 25 of the Agreement entered into between them. That in response to the said letter dated 04-08-2003, the respondent applicant on 11-08-2003 informed the petitioners that after following the procedure under Clause 25 of the Agreement and having failed in his attempt to settle the matter amicably, notice was issued requiring the petitioners to appoint an Arbitrator. Since, there was no response from the petitioners in the matter of appointing an Arbitrator, the present application has been filed under Section 11(6) of the Act praying this Court to appoint an Arbitrator.

In the counter affidavit filed by the petitioners herein, the petitioners admitted the filing of application, the exchange of letters and correspondence. It was however contended that the applicant himself by letter dated15-09-2003 sought reference of two additional claims, which was not endorsed to petitioner No.3 as was required under Clause 25 of the Agreement. The main defence was that Sri.K.K.Mutreja was appointed as Arbitrator, resigned on 24-09-2003, and the fact of submission of resignation was received only on 20-10-2003. The Chief Engineers vide his letter dated 03-11-2003 had appointed one Sri.A.K.Singal as Arbitrator, and therefore, the application filed by the respondent under Section 11(6) of the Act is not maintainable.

The learned Company judge after an elaborate consideration of the matter found that the petitioners herein admittedly appointed an Arbitrator only on 03-11-2003 much after the respondent applicant filed the application under Section 11(6) of the Act invoking the jurisdiction of this Court seeking appointment of Arbitrator.

There is no dispute about the fact that an Arbitrator has been appointed by the petitioners herein after the respondent applicant moved this Court seeking appointment of an Arbitrator.

The order passed by the learned Judge appointing the Arbitrator in our considered opinion, does not suffer from any legal infirmities or jurisdictional error. The subject matter that arises for consideration is covered by the judgment rendered by the apex Court in DATAR SWITCHGEARS LTD., v. TATA FINANCE LTD., AND ANOTHER. The apex Court on true construction of Section 11(6) of the Act held that a period of 30 days has been prescribed under Section 11(4) and Section 11(5) of the Act but, no time limit as such has been prescribed under Section 11(6) of the Act, so far as, Section 11(6) of the Act is concerned, if one party demands the opposite party to

appoint an Arbitrator and the opposite party does not make an appointment of the Arbitrator within 30 days of the demand, the right to appointment does not get automatically forfeited after expiry of 30 days. “If the opposite party makes an appointment even after 30 days of the demand, but **before the first party has moved the Court under Section 11,** that would be sufficient. In other words, in cases arising under Section 11(6), if the opposite party has not made an appointment within 30 days of demand, the right to make appointment is not forfeited but continues, but an appointment has to be made before the former files application under Section 11 seeking appointment of an Arbitrator. Only then the right of the opposite party ceases” (Emphasis supplied).

In the instant case the Arbitration Application under Section 11(6) of the Act has been filed by the respondent applicant on 20-10-2003 and whereas the petitioners herein have appointed Arbitrator on 03-11-2003. By that time the petitioners’ right to appoint Arbitrator came to an end. In the circumstances, the appointment of Arbitrator by the petitioners is of no consequence. It is under those circumstances, the learned Judge came to the right conclusion and accordingly appointed an Arbitrator to resolve the disputes between the parties.

Learned Central Government Standing Counsel however contended that the respondent applicant did not comply with the requirement under Clause 25 of the Agreement in the matter of issuing notice. Clause 25 prescribes the procedure required to be followed before seeking the appointment of Arbitrator and the respondent applicant failed to comply with the procedure.

We find no substance in the submission made by the learned counsel since this objection, could as well can be raised even before the Arbitrator. The question whether the respondent applicant had followed the procedure prescribed under Clause 25 of the Agreement itself can be raised before the Arbitrator together with all other objections which the petitioners are entitled to raise in law. On that count the appointment of Arbitrator cannot be quashed.

The order under challenge does not suffer from any error apparent on the face of the record requiring this Court’s interference in exercise of its certiorari jurisdiction.

The Writ Petition fails and shall accordingly stands dismissed.

Consequently, the interim order granted by this Court shall stand vacated.

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(B. Sudershan Reddy, J)

28..07..2004

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(K.C. Bhanu, J)

vs/grr

To

Two CD copies.

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO : 11479 of 2004

(Order per Hon'ble Sri Justice B. Sudershan Reddy)

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Dated: 28-07-2004